



# ***CITY COUNCIL AGENDA REPORT***

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MEETING DATE: AUGUST 15, 2006

ITEM NUMBER:

**SUBJECT: ZONING CODE AMENDMENT CO-06-04 AMENDING TITLE 13 OF THE COSTA MESA MUNICIPAL CODE REGARDING THE DEFINITION, REVIEW PROCEDURE, AND REGULATION OF "ASSEMBLY USE".**

**DATE: AUGUST 3, 2006**

**FROM: DEVELOPMENT SERVICES DEPARTMENT/PLANNING DIVISION**

**PRESENTATION BY: KIMBERLY BRANDT, AICP, PRINCIPAL PLANNER**

**FOR FURTHER INFORMATION CONTACT: KIMBERLY BRANDT (714) 754-5604**

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## **RECOMMENDATION:**

Planning Commission recommends that City Council give first reading to the alternative ordinance that amends the Zoning Code in respect to assembly uses.

## **BACKGROUND:**

Last year, staff identified the need to amend the City's Zoning Code to address the inconsistent regulation of assembly uses within the City's various zoning districts. Assembly uses include churches and other places of religious assembly, restaurants and bars, movie theaters, schools, clubs, studios, etc. Of particular concern was equal treatment of assembly uses that are protected by the First Amendment of the United States Constitution.

On August 22, 2005 and September 26, 2005, Planning Commission considered a proposed ordinance, which would allow churches/places of religious assembly to be "permitted" land uses in the C1 and C2 commercial zones, provided that they were located a minimum of 200 feet away from any residential zone and comply with all other applicable code standards including parking. This proposed regulation is similar to the City's current regulation of restaurants and bars. On a 3-2 vote (Egan and Garlich voting no), Commission recommended to City Council that the City's existing zoning regulations of requiring a discretionary approval in all zoning districts be retained for churches/places of religious assembly.

On October 18, 2005, Council considered the proposed ordinance and Commission's recommendation. After deliberation, Council tabled the ordinance and directed staff to prepare a new ordinance that requires a conditional use permit for all types of assembly uses and includes a definition of religious assembly, on a 3-1 vote (Foley voting no; Monahan absent). The Council minutes are provided in Attachment 3.

On January 23, 2006, Commission reviewed the ordinance that requires a conditional use permit for all types of assembly uses (see Attachment 1) and requested a study session; this session occurred on March 20, 2006.

On April 24, 2006, Commission continued the hearing on the ordinance until May 22, 2006 and directed staff to create an alternative ordinance. The Commission specified that the alternative ordinance was to allow churches/places of religious assembly to be permitted in certain commercial and industrial zones and to distinguish between the primary and ancillary function of a church/place of religious assembly.

On May 22, 2006, Commission recommended that Council give first reading to the alternative ordinance on a 5-0 vote. This alternative ordinance is discussed in detail in the following section.

On June 20, 2006, Council continued this ordinance to July 18, 2006, to allow additional time to study the proposed ordinance. On July 18<sup>th</sup>, Council requested additional background information from the City Attorney's office and continued the ordinance to August 15, 2006. The City Attorney is transmitting the requested information to Council under a separate memorandum.

### **ANALYSIS:**

Attached for your consideration are two ordinances, each of which proposes a different approach in creating even-handed zoning regulations for the different types of assembly use that exist in the City. Each ordinance is described below.

#### **City Council Directed Ordinance**

This ordinance was prepared pursuant to Council direction and it requires a conditional use permit for every type of assembly use and it includes a definition of assembly use. This definition, as shown below, includes churches/places of religious assembly as a type of assembly use. The complete ordinance is contained in Attachment 1.

**"Assembly use.** A use conducted in a structure or portion of a structure for the purpose of a civic, education, political, religious, or social function or for the consumption or receipt of food and/or beverages. Assembly use includes, but is not limited to, churches and other places of religious assembly, mortuaries, primary and secondary schools, trade and vocational schools, colleges, amusement centers, billiards parlors, bowling centers, establishments where food or beverages are served, motion picture theaters, physical fitness facilities, skating rinks, and dance, martial arts, and music studios. Assembly use does not include sexually oriented business."

The Zoning Code presently allows restaurants and bars with less than 300 square feet of public area as a "permitted use"; specifically a conditional use permit is not required. Staff proposes that this threshold of less than 300 square feet of public area be also applied to churches/places of religious assembly and studios (dance, martial arts, music, etc.) to maintain a consistent threshold for these assembly uses. If the public area were greater than 300 square feet, then a conditional use permit would be required; if not, the use would be a permitted use. Staff does not believe it is probable that a mortuary, school, college, amusement center, billiard parlor, bowling center, theater, health club, or skating rink would contain less than 300 square feet of public area; therefore, the threshold was not proposed for these particular types of assembly uses. As noted in the revised Land Use Matrix (Table 13-30 in Attachment 1), all types of assembly uses are proposed to require conditional use permits, with the exceptions noted above. The Zoning Code currently varies in the review requirement, depending on the land use, zoning district, and physical and operational characteristics of the proposed use.

## Planning Commission Alternative Ordinance

In their deliberation on the ordinance, Commission expressed a concern in making every type of assembly use subject to approval of a conditional use permit and recommended that the City's regulations be modified only in respect to churches and other places of religious assembly. To that end, Commission directed staff to prepare an alternative ordinance that would allow churches/places of religious assembly to be permitted in certain commercial and industrial zones provided there are standards that consider surrounding land uses, and that the ordinance distinguishes between the primary function of a church/place of religious assembly and any ancillary uses that may be associated with it. The alternative ordinance is contained in Attachment 2.

The primary differences between the alternative ordinance and the original ordinance are as follows:

1. It includes an additional definition of "churches and other places of religious assembly" as shown below. This definition also identifies land uses that are not considered the primary function of churches and other places of religious assembly.

**"Churches and other places of religious assembly.** A type of assembly use which has the principal purpose of religious worship and for which the primary space is a sanctuary. Religious activities and services held in the sanctuary are conducted at scheduled times. The use may also include accessory facilities in the same or separate building that includes classrooms, assembly rooms, restrooms, kitchen, library, and a one-family dwelling unit. Other uses such as, but not limited to, day care facilities, nursery schools, schools, retail sales, and services to businesses, are not considered a primary function of churches and other places of religious assembly."

2. The alternative ordinance also includes a new Zoning Code article that contains specific development standards for churches and other places of religious assembly. These standards are similar to the existing Zoning Code standards the City has adopted for restaurants and bars (another type of assembly use). In the alternative ordinance, Section 13-51.51 and Table 13-30 note when churches and other places of religious assembly are permitted uses or conditional uses. Section 13-51.51 also notes that land uses that are not the primary function of a church/place of religious assembly will be subject to the review and approval procedures in the Zoning Code that would be applied if the proposed land use was an independent business locating in the applicable zoning district.
3. The alternative does not amend the City's existing zoning regulations of other types of assembly uses.
4. Finally, this alternative ordinance contains specific development standards should a church or place of religious assembly be located within 200 feet of a residentially-zoned property. These standards are contained in Section 13-51.53 (see Attachment 2).

Please see the Planning Commission staff reports contained in Attachment 3 for additional analysis.

## **ALTERNATIVES CONSIDERED:**

The City Council may choose to do any of the following:

1. Give first reading to the alternative ordinance as recommended by Planning Commission, with any modifications that Council deems appropriate;
2. Give first reading to the ordinance that reflects Council's direction on October 2005, with any modifications that Council deems appropriate;
3. Take no action on either ordinance and retain the City's existing Zoning regulations for assembly uses.

## **FISCAL REVIEW:**

This ordinance does not require any fiscal review

## **LEGAL REVIEW:**

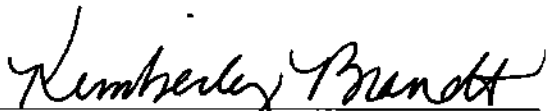
The City Attorney's Office has reviewed the ordinances and approved them as to form.

## **ENVIRONMENTAL DETERMINATION:**

This code amendment has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061(3) of the CEQA Guidelines contained in the California Code of Regulations.

## **CONCLUSION**

Staff believes that either ordinance results in equal treatment in the City's Zoning Code of assembly uses that are protected by the First Amendment of the United States Constitution when compared to other types of assembly uses.



KIMBERLY BRANDT, AICP  
Principal Planner



DONALD D. LAMM, AICP  
Deputy City-Mgr. – Dev. Svs. Director

DISTRIBUTION: City Manager  
Asst. City Manager  
City Attorney  
Deputy City Manager – Dev. Svs. Dir.  
Public Services Director  
City Clerk (2)  
Staff (4)  
File (2)  
Mr. Ed Fawcett, Costa Mesa Chamber of Commerce  
Ms. Diane Pritchett, South Coast Metro Alliance

- ATTACHMENTS:
- 1 Original Ordinance
  - 2 Alternative Ordinance
  - 3 Planning Commission Meeting Minutes and Staff Reports

File Name: 081506AssemblyUse	Date: 072706	Time: 10:00 a.m.
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**ATTACHMENT 1**

**ORIGINAL ORDINANCE**

## ORDINANCE NO. 06-

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA ADOPTING ZONING CODE AMENDMENT CO-06-04 WHICH AMENDS TITLE 13 OF THE COSTA MESA MUNICIPAL CODE REGARDING THE DEFINITION, REVIEW PROCEDURE, AND REGULATION OF "ASSEMBLY USE".

THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Title 13 of the Costa Mesa Municipal Code is hereby amended to read as follows:

a. Amend Section 13-6 to include the following definition:

**"Assembly use.** A use conducted in a structure or portion of a structure for the purpose of a civic, education, political, religious, or social function or for the consumption or receipt of food and/or beverages. Assembly use includes, but is not limited to, churches and other places of religious assembly, mortuaries, primary and secondary schools, trade and vocational schools, colleges, amusement centers, billiards parlors, bowling centers, establishments where food or beverages are served, motion picture theaters, physical fitness facilities, skating rinks, and dance, martial arts, and music studios. Assembly use does not include sexually oriented business."

b. Amend the following definition in Section 13-6:

**"Public area – assembly use establishments where food or beverages are served.** That portion of a structure, an entire structure, or an exterior area establishment reserved for the exclusive use of the public assembling for the purpose of a civic, education, political, religious, or social function or for the receipt or consumption of food and/or beverages. For the purpose of this Zoning Code, public area shall not include restrooms, kitchens, hallways, offices, or other areas restricted to employees only."

c. Amend Table 13- 30 as shown in Attachment A.

d. Amend Table 13-47 as shown below:

<p align="center"><b>TABLE 13-47</b> <b>PERMITTED AND CONDITIONALLY PERMITTED USES</b></p>																																																														
<b>LOCATION AND OPERATIONAL CHARACTERISTICS</b>	<b>C1-S</b>	<b>C1</b>	<b>C2</b>	<b>C3</b>	<b>TC</b>	<b>PD</b>	<b>MG</b>	<b>MP</b>																																																						
Establishments with 300 square feet or less of public area.  <u>Exception:</u> If located in a multi-tenant center where 30% or more of the tenants are similar businesses, i.e., establishments with less than 300 square feet of public area, the establishment shall be subject to review and approval of a minor conditional use permit.	P <sup>1,2</sup> or P	P	P	MC P	P <sup>1</sup> or P	P <sup>1</sup> or P	P	P																																																						
Establishments with more than 300 square feet of public area.	P <sup>1</sup> or P C	P C	P C	MC C	P <sup>1</sup> or P C	P <sup>1</sup> or P C	MC C	MC C																																																						
<p><b>ADDITIONAL REQUIREMENTS</b></p> <ol style="list-style-type: none"> <li>Establishments located within 200 feet of a residential zone are subject to the requirements of Section 13-49 DEVELOPMENT STANDARDS FOR ESTABLISHMENTS WITHIN 200 FEET OF RESIDENTIALLY ZONED PROPERTY.</li> <li>Establishments with drive-through operations are subject to the requirements of Section 13-50 DEVELOPMENT STANDARDS FOR DRIVE-THROUGH OPERATIONS.</li> <li>Establishments with live or public entertainment are subject to the requirements of Title 9, Article 11, REGULATORY PERMITS FOR PUBLIC ENTERTAINMENT.</li> </ol>																																																														
<p><b>EXCEPTIONS</b></p> <table> <tr> <td>Located within 200 feet of a residential zone. (Subject to the requirements of Section 13-49 DEVELOPMENT STANDARDS FOR ESTABLISHMENTS WITHIN 200 FEET OF RESIDENTIALLY ZONED PROPERTY)</td><td>P<sup>1</sup> or P</td><td>P</td><td>P</td><td>MC</td><td>P<sup>1</sup> or P</td><td>P<sup>1</sup> or P</td><td>P</td><td>P</td></tr> <tr> <td>Sale of alcoholic beverages for on-site consumption after 11:00 p.m. and/or provision of live entertainment or dancing located within 200 feet of a residential zone.</td><td>P<sup>1</sup> or C</td><td>C</td><td>C</td><td>C</td><td>P<sup>1</sup> or C</td><td>P<sup>1</sup> or C</td><td>C</td><td>C</td></tr> <tr> <td>Sale of alcoholic beverages for on-site consumption after 11:00 p.m. and/or provision of live entertainment or dancing located not within 200 feet of a residential zone.</td><td>P<sup>1</sup> or MC</td><td>MC</td><td>MC</td><td>MC</td><td>P<sup>1</sup> or MC</td><td>P<sup>1</sup> or MC</td><td>MC</td><td>MC</td></tr> <tr> <td>Drive-through operations. (Subject to the requirements of Section 13-50 DEVELOPMENT STANDARDS FOR DRIVE-THROUGH OPERATIONS)</td><td>P<sup>1</sup> or MC</td><td>MC</td><td>MC</td><td>MC</td><td>P<sup>1</sup> or MC</td><td>P<sup>1</sup> or MC</td><td>MC</td><td>MC</td></tr> <tr> <td>Establishments with less than 300 square feet of public area located in a multi-tenant center where 30% or more of the tenants are similar businesses, i.e., establishments with less than 300 square feet of public area.</td><td>P<sup>1</sup> or MC</td><td>MC</td><td>MC</td><td>MC</td><td>P<sup>1</sup> or MC</td><td>P<sup>1</sup> or MC</td><td>MC</td><td>MC</td></tr> <tr> <td>Establishments with a micro brewery</td><td>P<sup>1</sup> or C</td><td>C</td><td>C</td><td>C</td><td>P<sup>1</sup> or C</td><td>P<sup>1</sup> or C</td><td>C</td><td>C</td></tr> </table> <ol style="list-style-type: none"> <li>Pursuant to an approved master plan which specifies these operational characteristics and/or location of the business.</li> <li>For the purposes of this table, the symbols in the non-shaded areas shall have the following meaning: P= Permitted; MC= Minor Conditional Use Permit; C= Conditional Use Permit."</li> </ol>									Located within 200 feet of a residential zone. (Subject to the requirements of Section 13-49 DEVELOPMENT STANDARDS FOR ESTABLISHMENTS WITHIN 200 FEET OF RESIDENTIALLY ZONED PROPERTY)	P <sup>1</sup> or P	P	P	MC	P <sup>1</sup> or P	P <sup>1</sup> or P	P	P	Sale of alcoholic beverages for on-site consumption after 11:00 p.m. and/or provision of live entertainment or dancing located within 200 feet of a residential zone.	P <sup>1</sup> or C	C	C	C	P <sup>1</sup> or C	P <sup>1</sup> or C	C	C	Sale of alcoholic beverages for on-site consumption after 11:00 p.m. and/or provision of live entertainment or dancing located not within 200 feet of a residential zone.	P <sup>1</sup> or MC	MC	MC	MC	P <sup>1</sup> or MC	P <sup>1</sup> or MC	MC	MC	Drive-through operations. (Subject to the requirements of Section 13-50 DEVELOPMENT STANDARDS FOR DRIVE-THROUGH OPERATIONS)	P <sup>1</sup> or MC	MC	MC	MC	P <sup>1</sup> or MC	P <sup>1</sup> or MC	MC	MC	Establishments with less than 300 square feet of public area located in a multi-tenant center where 30% or more of the tenants are similar businesses, i.e., establishments with less than 300 square feet of public area.	P <sup>1</sup> or MC	MC	MC	MC	P <sup>1</sup> or MC	P <sup>1</sup> or MC	MC	MC	Establishments with a micro brewery	P <sup>1</sup> or C	C	C	C	P <sup>1</sup> or C	P <sup>1</sup> or C	C	C
Located within 200 feet of a residential zone. (Subject to the requirements of Section 13-49 DEVELOPMENT STANDARDS FOR ESTABLISHMENTS WITHIN 200 FEET OF RESIDENTIALLY ZONED PROPERTY)	P <sup>1</sup> or P	P	P	MC	P <sup>1</sup> or P	P <sup>1</sup> or P	P	P																																																						
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- e. Amend Section 13-49 to read as follows:

"Establishments where food or beverages are served that are within 200 feet of residentially-zoned property shall comply with the following development standards, unless the standards are modified through the issuance of a ~~minor conditional use permit~~ or conditional use permit."

- f. Amend Section 13-50 to read as follows:

"Establishments with drive-through operations shall comply with the following development standards, unless the standards are modified through the issuance of a ~~minor conditional use permit~~."

- g. Amend Section 13-50(d) to read as follows:

"(d) Each drive-through lane shall be a minimum of 160 feet in length, unless modified by the final review authority Zoning Administrator. The length of the drive-through lane shall be measured from its entrance point to the pick-up window."

- h. Amend Section 13-50(f) to read as follows:

"(f) Application for a ~~minor conditional use permit~~ shall include an operation statement indicating the physical improvements and operational measures proposed to minimize idling vehicle emissions."

- i. Amend Section 13-51(b)(1) to include the following subparagraph:

"g. The introduction of a micro brewery."

Section 2. Environmental Determination. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061(3) of the CEQA Guidelines contained in the California Code of Regulations.

Section 3. Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to affect the provisions of this Ordinance.

Section 4. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

Section 5: This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof and prior to the expiration of fifteen (15) days from its passage shall be

published once in the ORANGE COAST DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2006

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk of the  
City of Costa Mesa

\_\_\_\_\_  
City Attorney

# ATTACHMENT A

TABLE 13-30  
CITY OF COSTA MESA LAND USE MATRIX

LAND USES	ZONES												
	R1	R2 MD	R2 HD	R3 P	A	CL	C1	C2	C3	T C1	M G	M P	I & R S
24. Churches and other places of religious assembly with more than 300 square feet of public area	C	C	C	C	C	C	C	C	C	C	C	C	C
24a. Churches and other places of religious assembly with 300 square feet or less of public area	P	P	P	P	P	P	P	P	P	P	P	P	P
25. Civic and community clubs	C	C	C	C	C	C	C	C	C	C	C	C	C
37. Schools: trade and vocational	•	•	•	•	•	MC	C	C	C	P	MC	MC	P
75. Entertainment, live or public	•	•	•	•	•	•	•	•	•	•	•	•	•
99. Motion picture theaters and other theaters NOT WITHIN 200' of residential zones Reserved.	•	•	•	•	•	•	P	P	P	P	•	•	•
100. Motion picture theaters and other theaters WITHIN 200' of residential zones	•	•	•	•	•	•	C	C	C	C	•	•	•
142. Studios: Dance: Martial arts: Music, etc. with 300 square feet or less of public area	•	•	•	•	•	•	P	P	P	P	P	P	•

1. Uses proposed in this zone are subject to verification of consistency with the adopted master plan. Uses not specified in the master plan, could be allowed, subject to the review process indicated in this matrix, if the proposed use is determined to be compatible with the adopted master plan.
2. This use is subject to the requirements of the referenced Municipal Code article or section.
3. If residential uses exist, accessory uses shall be permitted.
4. For the purposes of this table, the symbols in the non-shaded areas shall have the following meaning: C - Conditional Use Permit; MC - Minor Conditional Use Permit; P - Permitted; • - Prohibited

TABLE 13-30 CITY OF COSTA MESA LAND USE MATRIX												
LAND USES	ZONES											
	R1	R2 MD	R 2 H D	R F 3 P	A P	CL	C 1 2	C 1 S <sup>1</sup>	T C <sup>1</sup>	M G	M P	I P
142a. Studios: Dance; Martial arts; Music, etc. with more than 300 square feet of public area	•	•	•	•	•	•	P	P	MG	MG	MG	•
							P	P	MG	MG	MG	•
							P	P	MG	MG	MG	•
							P	P	MG	MG	MG	•
							P	P	MG	MG	MG	•
							P	P	MG	MG	MG	•
							P	P	MG	MG	MG	•
							P	P	MG	MG	MG	•
							P	P	MG	MG	MG	•
							P	P	MG	MG	MG	•
							P	P	MG	MG	MG	•

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3. If residential uses exist, accessory uses shall be permitted.
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**ATTACHMENT 2**

**ALTERNATIVE ORDINANCE**

## ORDINANCE NO. 06-

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA ADOPTING ZONING CODE AMENDMENT CO-06-04 WHICH AMENDS TITLE 13 OF THE COSTA MESA MUNICIPAL CODE REGARDING THE DEFINITION, REVIEW PROCEDURE, AND REGULATION OF "ASSEMBLY USE".

THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Title 13 of the Costa Mesa Municipal Code is hereby amended to read as follows:

a. Amend Section 13-6 to include the following definitions:

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**Churches and other places of religious assembly.** A type of assembly use which has the principal purpose of religious worship and for which the primary space is a sanctuary. Religious activities and services held in the sanctuary are conducted at scheduled times. The use may also include accessory facilities in the same or separate building that includes classrooms, assembly rooms, restrooms, kitchen, library, and a single-family dwelling unit. Other uses such as, but not limited to, day care facilities, nursery schools, schools, retail sales, and services to businesses, are not considered a primary function of churches and other places of religious assembly."

b. Amend Table 13- 30 as shown in Attachment A.

c. Add Article 4.5 to Chapter V as shown below:

#### **"ARTICLE 4.5 DEVELOPMENT STANDARDS FOR CHURCHES AND OTHER PLACES OF RELIGIOUS ASSEMBLY**

##### **Sec. 13-51.50 PURPOSE**

The purpose of this article is to regulate and provide development standards for churches and other places of religious assembly to ensure land use compatibility with adjacent land uses. The proximity of residential uses to this type of assembly use is a concern of this article. Where the distance criterion of 200 feet from residentially-zoned property is given in this article, it shall be measured from the property line of the site to the property line of the nearest residentially-zoned property.

### **Sec. 13-51.51 PERMITTED AND CONDITIONALLY PERMITTED USES**

Churches and other places of religious assembly are subject to the review and approval procedures shown in Table 13-30 CITY OF COSTA MESA LAND USE MATRIX and the applicable development standards contained in this article. Other land uses such as, but not limited to, day care facilities, nursery schools, schools, primary and incidental retail sales, such as a bookstore, and services to businesses, that are not the primary function of a church or other place of religious assembly, shall be subject to the review and approval procedures shown in Table 13-30 CITY OF COSTA MESA LAND USE MATRIX for that specific land use.

### **Sec. 13-51.52 GENERAL DEVELOPMENT STANDARDS**

Churches and other places of religious assembly are subject to the following development standards.

- (a) Outdoor activity areas are permitted provided that that area does not encroach into required street setback, parking and circulation, or interior landscaped areas; except as approved through the issuance of a minor conditional use permit.
- (b) Accessory facilities in the same or separate building are permitted, including classrooms, assembly rooms, restrooms, kitchen, library, and a single-family dwelling unit. Should a single-family dwelling unit be included, its occupancy shall be limited to a person(s) and/or a family that is directly affiliated with the operation of that church or other place of religious assembly. The single-family unit shall not be rented and/or leased to persons that are not affiliated with that church or other place of religious assembly, nor shall it be used as either a small or large boarding house.
- (c) All churches and other places of religious assembly shall comply with the review procedures indicated in Table 13-30, as well as with all other applicable development standards of this Title.

### **Sec. 13-51.53 DEVELOPMENT STANDARDS FOR CHURCHES AND OTHER PLACES OF RELIGIOUS ASSEMBLY WITHIN 200 FEET OF RESIDENTIALLY-ZONED PROPERTY**

In addition to the General Development Standards required under Section 13-51.52, churches and other places of religious assembly that are within 200 feet of residentially-zoned property shall comply with the following development standards, unless the standards are modified through the issuance of a conditional use permit.

- (a) All exterior lighting shall be shielded and/or directed away from residential areas.
- (b) Outdoor public communication systems shall not be audible in adjacent residential areas.
- (c) Trash facilities shall be screened from view and designed and located appropriately to minimize potential noise and odor impacts to adjacent residential areas.

- (d) Outdoor activity areas shall be oriented away or sufficiently buffered from adjacent residential areas to prevent disturbance of the peaceful use of such areas by residents.
- (e) For new construction, a landscaped planter area, a minimum of 5 feet in width, shall be provided as an additional buffer to adjacent residential areas. The planter area shall contain appropriate plant materials to provide an immediate and effective screen. Plant materials shall meet with the approval of the Planning Division. For interior alterations, the Planning Division may also require the construction of a landscaped planter area to buffer adjacent residential areas, if feasible.
- (f) For new construction, all interior property lines abutting residentially-zoned property shall have a minimum six-foot high masonry wall, as measured from the highest grade. An eight-foot high masonry wall may be required, based on the church's/place's of religious assembly operational characteristics, in order to provide additional protection to adjacent residential uses. A planning application may be required for walls exceeding six (6) feet in height. For interior alterations, the Planning Division may also require the construction of a masonry wall to buffer adjacent residential areas, if feasible.
- (g) Hours of operation for religious services shall not occur any time between 11:00 p.m. and 6:00 a.m.
- (h) Truck deliveries shall not occur anytime between 8:00 p.m. and 7:00 a.m."

Section 2. Environmental Determination. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061(3) of the CEQA Guidelines contained in the California Code of Regulations.

Section 3. Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to affect the provisions of this Ordinance.

Section 4. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

Section 5: This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof and prior to the expiration of fifteen (15) days from its passage shall be published once in the ORANGE COAST<sub>3</sub>DAILY PILOT, a newspaper of general circulation,



printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2006

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk of the  
City of Costa Mesa

\_\_\_\_\_  
City Attorney



## **ATTACHMENT 3**

### **PLANNING COMMISSION MEETING MINUTES AND STAFF REPORTS**

AN ORDINANCE REGARDING  
DEFINITION, REVIEW PROCE-  
DURE AND REGULATION OF  
"ASSEMBLY USE"

City

The Chair opened the public hearing for consideration of an ordinance of the City Council of the City of Costa Mesa, California, amending Title 13 of the Costa Mesa Municipal Code regarding the definition, review procedure, and regulation of "Assembly Use." Environmental determination: exempt.

Acting Secretary Kimberly Brandt reviewed the information in the staff report and gave a presentation. She said staff was recommending Planning Commission recommend to City Council, first reading be given to the draft ordinance.

Ms. Brandt explained that the intent of this zoning code amendment is to create an even treatment of assembly uses, particularly those types of assembly uses that are protected by the first amendment of the United States Constitution.

Commissioner Egan commended staff on the alternative ordinance and said she was very happy with it.

Commissioner Garlich also thanked staff for an outstanding job in creating an alternative ordinance. He said both ordinances meet the requirement of consistent treatment, however, the original one did that by making every type of assembly use conditional. The alternative ordinance goes back to making things permitted; particularly, those that were previously permitted will remain permitted. It also provides a definition of "religious assembly use" that was missing in the proposed ordinance and allows the City to treat primary uses separately from ancillary uses.

Commissioner Egan added her concern about the prior draft ordinance because it would make all assembly uses "conditional" uses. While it would satisfy the "non-discrimination" requirements, there still might be a first amendment issue in requiring a discretionary permit. This alternative ordinance takes care of that concern, and she is very happy with the legal aspects.

Commissioner Fisler said he liked the alternative amendment and he commended staff. He said his primary objection was that he thought it was a "back doorway" to reopen a job center in this community that he did not believe would enhance the quality of life. He is satisfied that if a job center is an ancillary use of a church, it must be conducted totally indoors including any waiting area.

There was discussion between the Chair, Ms. Brandt and Ms. Barlow regarding a minor change in wording related to item (b) of the Supplemental Information Memo dated May 16<sup>th</sup> under Sec.13-51.52 General Development Standards (see motion below).

The Chair felt staff did an excellent job on this alternative amendment.

No one else wished to speak and the Chair closed the public hearing.

MOTION:

CO-06-04

Definition, Review Procedure, and  
Regulation of Assembly Use  
Recommended to City Council

A motion was made by Commissioner Garlich, seconded by Chair Perkins and carried 5-0 to recommend City Council, first reading be given to the alternative draft ordinance with the following addition: Include the language contained in the Supplemental Information Memo dated May 16, 2006, Sec.13-51 General Development Standards, with the following modifications: Item (b) "Accessory facilities in the same or separate building are permitted, including classrooms, assembly rooms, restrooms, kitchen, library, and a single-family dwelling unit. Should a single-family dwelling unit be included, its occupancy shall be limited to a person(s) and/or a family that is directly affiliated with the operation of the that church or other place of religious assembly. The single-family unit shall not be rented and/or leased to persons that are not affiliated with the that church or other place of religious assembly, nor shall it be used as either a small or large boarding house."

Ms. Brandt stated that this ordinance would go forward to the City Council meeting of Tuesday, June 20, 2006.

of construction.

**PUBLIC HEARINGS:**

**AN ORDINANCE REGARD-  
ING DEFINITION, REVIEW  
PROCEDURE AND REGULA-  
TION OF "ASSEMBLY USE"**

City

The Chair opened the public hearing for consideration of an ordinance of the City Council of the City of Costa Mesa, California, amending Title 13 of the Costa Mesa Municipal Code regarding the definition, review procedure, and regulation of "Assembly Use." Environmental determination: exempt.

Principal Planner Kimberly Brandt reviewed the information in the staff report and gave a presentation. She explained that the proposed regulations for assembly uses are uses currently in the City's zoning code. They are not defined, nor are they treated consistently in the Land Use Matrix in terms of requiring a conditional use permit, a minor conditional use permit, or permitting a use by right. This ordinance does two things: (1) It defines assembly use (page 2 of the staff report). The definition specifically excludes sexually oriented businesses because there is an entire article in the zoning code devoted to that subject and includes all permitting requirements and specific location requirements and operational regulations for that use. (2) The zoning code, as part of its Land Use Matrix, would be modified so that the various types of assembly uses are treated consistently. She stated that this draft ordinance is not proposed to be retroactive, and would only apply to new assembly uses proposed within the City.

Ms. Brandt said staff was recommending, as a first option, that Planning Commission may: (1) Make modifications to the proposed ordinance and forward that recommendation to City Council; (2) Choose to provide direction to staff if they would like to see an alternative ordinance drafted for City Council consideration; or (3) Recommend that City Council not take any action on the proposed ordinance and retain the existing zoning regulations for assembly uses.

Commissioner Garlich said the intent of the ordinance is to treat assembly uses consistently. He said that alternative #3 (to retain current code), would not achieve consistency. He said the other alternative is to make everything "conditional." He felt if we made everything "permitted" (as an alternative), it would achieve the objective of consistency. Commissioner Garlich, however, felt there might be a possibility that the permitted process might result in some unintended consequences. Commissioner Egan discussed the possibility of allowing religious assembly uses in industrial zones.

City Attorney Kimberly Barlow briefly stated the goal is provide "consistency of treatment" and to "make this process easy to administer" from staff's perspective and uncomplicated for those seeking the required permits in the required zones. She felt an ordinance could be structured to allow certain types of assembly uses as a matter of right, in certain zones. Establishing a system that is fair and provides equal treatment, while addressing, secondary impacts of businesses (traffic, noise, kids screaming, smoke, alcohol, etc.), is desirable.

Ms. Barlow said to answer Commissioner Garlich's question regarding permitted uses only and consistency, they can draft an ordinance that attempts to do that. She felt City Council would want to hear from Planning Commission about all the available alternatives there are to accomplish these goals.

In response to Commissioner Egan, Ms. Barlow explained a religious assembly use, under current law, is protected, as are other types of first amendment-protected uses. Where that's the primary use, the secondary or ancillary uses are not protected.

Commissioner Egan asked if it would be treating religious assemblies unequally, if the Commission were to make them a "permitted" use in certain industrial zones, and a "conditional" use in commercial zones. In response, Ms. Barlow said it depends on whether there is a fair opportunity to locate in those different areas depending upon the different kinds

of uses.

In response to a question from Commissioner Garlich, Ms. Barlow said she would like to know from the Commission what uses they deem sufficiently different from assembly uses that don't have the kinds of secondary impacts.

In response to a question from the Chair regarding the contents of the letter received from Mr. Ed Fawcett of the Costa Mesa Chamber of Commerce, Ms. Brandt stated she had reviewed the letter and gave an overview of the concerns expressed in the letter.

There was discussion between the Chair and Ms. Barlow concerning the CUP's that run with the land, based on the operating characteristics of that particular business, and considerations related to that business. There was also discussion between the Chair and Ms. Barlow regarding enforcement issues and the potential for secondary impacts.

In response to questions from the Chair regarding standards, Ms. Brandt stated the City does have standard conditions of approval that are applied to different types of uses, including assembly uses and they are specific to the type of use.

Commissioner Fisler raised concerns about consistency with the treatment of sexually-oriented businesses.

In response to Mr. Fisler's comments, Ms. Barlow explained that the City is permitted to separately regulate, and in fact, be more restrictive with "sexually-oriented" businesses because of their demonstrated secondary affects in our City.

In response to the Chair regarding where the number of 300 square feet comes from, Ms. Brandt explained that the 300 square-foot threshold is already in place for restaurants and bars in terms of a threshold for requiring different parking requirements and it has been used by the City for years.

There was discussion between Commissioner Fisler and Ms. Brandt regarding the options, which would be designated in the Land Use Matrix, i.e., instead of listing out each type of assembly use, it would be listed as "assembly use with less than 300 square-feet", or more than 300 square feet"

There was discussion between the Chair and City Attorney Barlow regarding an increase of the 300 square feet. Mr. Robinson commented that the 300 square feet threshold is related to parking requirements for small restaurants with limited public seating area. He said before changing that requirement, staff would want to investigate impacts on parking assumptions and requirements.

There was discussion between the Chair and Ms. Barlow regarding the 300 square-foot threshold and singling out assembly uses such as religious or restaurant uses. Ms. Barlow said if the Commission was interested in allowing for larger thresholds "by right", parking standards could still be applied but would require some adjustments.

Commission Egan asked if there was a way to prevent problems with ancillary uses without litigation, etc., such as Buena Park's dilemma with the church providing lodging. Ms. Barlow stated there is no way to guaranty any process that can avoid litigation. She felt there is a way to try to do that, however, the state and federal governments have the right to supersede the City's regulations.

Commissioner Garlich said he does not support the proposed ordinance that would create conditional use permits for things that were previously permitted. He has been trying to determine what an alternative ordinance might need to address. In reference to Ms. Barlow's request, "what secondary uses are sufficiently different from existing uses", he has jotted down 3 ideas. They are uses that might be: (1) a threat to public safety; (2) that have a detrimental affect on other assembly uses in the same area; and (3) they have an undesirable impact on the quiet en-

joyment of adjoining property, due to noise, lighting, incompatible outdoor activity, etc. Ms. Barlow indicated it would be helpful to know if there is a use that has been included in the definition of assembly uses which does not properly belong there, or if the size requirements should be changes. She said if he is inclined to consider something along the lines of what Commissioner Egan has envisioned of allowing certain kinds of assembly uses, or even all assembly uses "by right" in industrial zones under certain circumstances, i.e., with certain operating conditions built in and then requiring permits. Or, allowing all of these kinds of assembly uses for their core functions "by right", but requiring a use permit for ancillary functions.

Commissioner Garlich agreed with the objections summarized in Mr. Fawcett's letter from the Chamber of Commerce. He said it is a giant step backwards to take permitted uses and make them conditional if there are reasonable alternatives to that approach. He added that the "300 square-foot threshold" should be left as is since he trusts staff's judgment this matter.

Commissioner Fisler said he did not like going backwards and having every business get a permit, but his main concern is, what is the core function of a church? He is also concerned about the ancillary functions of those churches, specifically, the lodging and the job center, because when the job center.

Judy Berry, 2064 Meadow Lane, Costa Mesa, expressed concern about the previous closed session and asked for clarification about the use of an "exterior area." Ms. Barlow said the "exterior area" in question, would have to be reserved for exclusive use of those public assembly uses. A portion of a parking lot that would be used sometimes for assembly and sometime for a parking lot would not fall within this exception.

Ms. Brandt also addressed the issue, explaining that the zoning code requires that all uses be conducted "under roof."

Mike Berry, 2064 Meadow Lane, Costa Mesa, also expressed concerns about the closed session and asked how this would affect the "live/work" use about to be built on the Westside. He asked if there should be an allowance for that. Ms. Brandt explained that a "live/work" is not an assembly use by definition. Mr. Berry said he has received a number of calls about this and those people believe the City is creating an opportunity to bring the job center back.

Martin Millard, 2970 Harbor Boulevard, Costa Mesa, raised concerns regarding the proposed ordinance, and its relationship to the job center. He felt there must be some discretionary control on the part of Planning Commission and City Council. He felt the ordinance needed work and the definition of "assembly use" should be expanded.

No one else wished to speak and the Chair closed the public hearing.

In response to a question from Commissioner Fisler regarding job centers, Ms. Brandt explained that it is currently in the Land Use Matrix named "Employment Service Center" which is a permitted use in commercial zones. Assembly use has been defined in the proposed definition (page 2 of the staff report), as: "for the purpose of a civic, education, political, religious, or social function."

In response to a question from Commission Egan regarding the definition of assembly use, "civic, educational, political, religious or social function" does cover things like motion picture theaters, etc. and felt it should be expanded. Ms. Barlow felt using function for the others and say, "or for social purposes" would probably address that concern.

There was discussion between the Chair and Ms. Barlow regarding "direction to staff" for modifications, etc. to the ordinance and whether it should be done by motion.

Vice Chair Hall stated that the decision between direction and a motion, he strongly believes that any direction that is given to staff be done by motion.

Commissioner Garlich stated his preference for an alternative to the current ordinance that would use the permitted approach as opposed to the conditional use approach to maintain consistency between assembly uses. And, to carry on a necessary dialogue with Ms. Barlow and Ms. Brandt to ensure the impacts have been articulated that would allow the differentiation between core uses.

Vice Chair Hall said he was inclined to make a motion to retain the current ordinance but he did not believe it would pass. In this case, he said there are so many alternatives raised by the Commission, Ms. Brandt and Ms. Barlow, that to try and put all those ideas into one motion would not happen.

MOTION 1:  
Assembly Uses Ordinance  
Withdrawn

A motion was made by Vice Chair Hall, seconded by Commissioner Fidler (later withdrawn for the substitute motion that follows), that the entire ordinance as presented to the Commission this evening, be carried forward to whatever number of study sessions are required to finalize details to come up with a comprehensive ordinance to recommend to the City Council.

There was discussion between the Chair and Vice Chair regarding the motion.

Commissioner Egan believed they might be able to pass a motion tonight that would allow staff to go back and provide the Commission with an alternate ordinance.

SUBSTITUTE MOTION:  
Assembly Uses Ordinance  
Continued

A substitute motion was made by Commissioner Egan, seconded by Commissioner Garlich and carried 5-0 to direct staff, to draft an alternative ordinance that allows a church or other place of religious assembly as a "permitted use", and that any ancillary use to the core function would require a conditional use permit or minor conditional use permit; and, continued this item to the study session of May 15, 2006, and to the Public Hearing of May 22, 2006.

During discussion on the motion, Commissioner Egan stated that doing the right thing to have an ordinance that's appropriate under existing law and what's likely to happen in the future. The reason she did not like the ordinance before Commission this evening, is partly because it is creating unnecessary burdens, and partly because she believes the first time a conditional use permit is denied for a first amendment use, the City will be litigating the first amendment issues.

Commissioner Garlich felt the Commission should allow a revised alternative ordinance to come back to the Commission, perhaps to a study session before another public hearing.

He felt Ms. Barlow's previous suggestion to try to work on the impacts and not the nature of the uses and the items he mentioned earlier: threat to public safety; detrimental affect on other assembly uses in the area, and an undesirable impact on the quiet enjoyment of adjoining properties due to variety of noise and lighting and incompatible activities, would at least be some of the things considered in crafting that alternative ordinance.

In response to Ms. Barlow's question about detrimental affects on other assembly uses in the area, Commissioner Garlich responded that it could be adjacent uses or those in the area. He said he would include other businesses in a commercial zone, and neighboring uses (in a different way than commercial).

There was discussion between the Chair and Ms. Barlow regarding the Chair's request for definition of the word "detrimental."

Vice Chair Hall noted, that Commissioner Garlich had indicated he would support Commissioner Egan's motion and would like to see it



come through a study session. He said if that is a part of the motion, he would also support it and felt it was a better motion than his. Commissioner Garlich said he would include it if staff is comfortable with it; Commission Egan also agreed.

Vice Chair Hall withdrew his original motion.

Commissioner Fislser agreed with the Chair in that he would also like to see "detrimental" defined in terms of the quality of life to the City, or detrimental to the adjoining business(es). He said it is his personal opinion that the job center is very detrimental to the City.

Ms. Brandt suggested the study session date certain be May 15<sup>th</sup> and followed by the May 22<sup>nd</sup> public hearing for the motion; the maker and second agreed.

The Chair concurred with the substitute motion. Said he did not want to see anything that would create a detrimental affect, i.e., the job center. He agreed with the majority of comments by the Commission and said he appreciated Mr. Fawcett's letter. He said like Commissioner Garlich, they have to also consider not only residences, but the business community as well.

At this time, Ms. Barlow reminded Commissioner Fislser that he was to abstain from the following item; however, Commissioner Fislser realized he had made an error and said he should have abstained from Item #2 under the "Consent Calendar." At this time, the previous vote for that item was withdrawn and a new vote was taken with Commissioner Fislser absent from the Chambers. *(As shown above – General Plan Consistency finding to allow the Orange County Department of Education to lease space in the building located at 1525 Mesa Verde Drive East, Suites 108 and 109- first item to be heard this evening and second item on the Consent Calendar).*

PARCEL MAP PM-06-106

Fiock/Burger

The Chair opened the public hearing for consideration of Parcel Map PM-06-106 for Thomas Burger, authorized agent for Rick Fiock, for a parcel map to facilitate a previously approved conversion of 3 apartments to airspace condominiums (PA-04-18), located at 151 Albert Place, in an R2-MD zone. Environmental determination: exempt.

Associate Planner Wendy Shih reviewed the information in the staff report and gave a presentation. She said staff was recommending approval by adoption of Planning Commission resolution, subject to conditions.

Tom Burger, 1990 South Coast Highway, Laguna Beach, thanked Ms. Shih for her favorable presentation; he said they appreciated the wording for the drafted resolution; concurred with the findings, and agreed to the conditions of approval. He said they would also be happy to work with the Engineering Department to resolve any further concerns they may have.

No one else wished to speak and the Chair closed the public hearing.

MOTION:  
PM-06-106  
Approved

A motion was made by Commissioner Garlich, seconded by Vice Chair Hall, and carried 5-0 to approve Parcel Map PM-06-106, by adoption of Planning Commission Resolution PC-06-29, based on the information and analysis in the Planning Division staff report, and findings contained in exhibit "A", subject to conditions in exhibit "B."

The Chair explained the appeal process.

PLANNING APPLICATION  
PA-05-54

Carpenter/Levesque

The Chair opened the public hearing for consideration of Planning Application PA-05-54 for Suzanne Levesque, authorized agent for Dennis and Jeanne Carpenter, to convert 16 apartment units to a common interest development (airspace condominiums), located at 1940 Maple Avenue, in an R3 zone. Environmental determination: exempt.

Staff withdrew this item from the calendar.

APPEAL OF ZONING

Appeal of Zoning Administrator's denial of a request to rebuild a non-



# **CITY OF COSTA MESA**

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

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DEVELOPMENT SERVICES DEPARTMENT

**FOR ATTACHMENTS NOT INCLUDED IN THIS REPORT,**

**PLEASE CONTACT THE CITY CLERK'S OFFICE AT**

**(714) 754-5121**